

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NYERI

Civil Appeal 52 of 2004

ELIJAH WACHIRA & OTHERS APPELLANTS

VERSUS

EUSTACE MWANGI GITHIKU RESPONDENT

*(Being an appeal against the orders made on 15th May 2002 by N.M. Kiriba Senior
Resident Magistrate in Principal Magistrate's*

Civil Suit No. 255 of 2001 at Kerugoya)

JUDGMENT

The present appeal is according to the memorandum of appeal filed herein against the order of 15th May 2002 issued by SRM'S Kerugoya Court. The typed proceedings however annexed to the record of appeal and even the ones contained in the lower court's file do not cover the date of 15th May 2002. They start from 11th September 2002. Going by the memorandum of appeal the order appealed from was issued on 15th May 2002. This appeal was filed on 8th June 2006. Clearly that was a period more than 30 days provided for an appeal from subordinate court by section 79G of the Civil Procedure Act. There is nothing on the court file or on the record of appeal to show that leave was granted by the court to the appellant to file this appeal out of time. Order XLI rule 8B (4) (f) provides;-

“Before allowing the appeal to go for hearing the judge shall be satisfied that the following documents are on the court record, and that such of them as are not in the possession of either party have been served on that party, that is to say-(f) the judgment, order or decree appealed from, and, where appropriate, the order (if any) giving leave to appeal;”

Further rule 8B (4) (g) (ii) provides as follows;

“The judge may dispense with the production of any document or part of a document which is not relevant other than those specified in paragraphs (a), (b) and (f).”

It is clear from that rule that a party ought to provide an extracted order giving him leave to file an appeal out of time. Having failed to do so it is my finding that the present appeal is incompetent for having been filed out of the statutory provided period without the leave of the court. I do therefore hereby struck out this appeal with costs to the respondent.

Dated and delivered at Nyeri this 8th day of October 2008.

MARY KASANGO

JUDGE